

Biodiversity Net Gain Consultation

Chiltern Society Questionnaire Responses

March 2022

1. Would you like your response to be confidential?

(Required) Yes No

If you answered 'Yes' to this question, please state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality

2. What is your name?

Name (Required)

Colin Blund

3. What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

4. What is your organisation?

Organisation (Required)

Chiltern So

5. Which option best describes the sector you work in or otherwise represent?

(Required) Academic Development industry: commercial / industrial
 Development industry: housebuilding Development industry: mixed
 Development industry: other Ecological consultancy Environmental consultancy
 Land agency Non-governmental organisation None, I am responding as an individual Other (please specify) Planning authority Planning consultancy
 Professional body or association

If you answered 'Other', please specify

6. Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

a) for area-based habitat:

Yes, and the minimum threshold should be 2 meters squared Yes, and the minimum threshold should be 5 meters squared Yes, and the minimum threshold should be 10 meters squared Yes, and the minimum threshold should be 20 meters squared Yes,

and the minimum threshold should be 50 meters squared Yes, but below a different threshold (please specify) No (please explain why not) Do not know

Please provide any explanation for your answer here

The key to biodiversity enhancement and nature recovery is to create networks of wildlife habitats. Even small gains can add up to a larger benefit. The key will be for local authorities to identify which habitats are the key habitats to be created or enhanced in each part of their administrative area. These habitats should be identified as part of the Local Plan process and could form part of a digitised planning system as it is developed.

b) for linear habitat (hedgerows, lines of trees, and watercourses):

Yes, and the minimum threshold should be 2 meters Yes, and the minimum threshold should be 5 meters Yes, and the minimum threshold should be 10 meters Yes, and the minimum threshold should be 20 meters Yes, and the minimum threshold should be 50 meters Yes, but below a different threshold (please specify) No (please explain why not) Do not know

Please provide any explanation for your answer here

These are crucial habitats which should be relatively easy to extend or re-create, either on or off site. The threshold should be low as local authorities should be looking to create these type of features to form interconnected networks across their area.

7. Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

While householder applications could be exempted from mandatory 10% biodiversity net gain, local authorities should encourage homeowners to incorporate biodiversity enhancements wherever possible. This should be supported through planning policies.

For example, where house extensions or boundary changes involve the removal of hedgerows or trees, there needs to be a way for local authorities to seek compensation for habitat loss, particularly where that feature may form part of an interconnected network.

8. Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

If the proposal is purely for change of use and with no physical changes then it should be exempt from Biodiversity Net Gain.

However, if the proposal also includes physical works, it should be treated in the same way as any other application and require a mandatory biodiversity net gain.

There must not be a loophole that allows applications to be exempt just because a change of use forms part of the application.

9. Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?

Yes, only for biodiversity net gain (please explain why) Yes, also for some other environmental mitigation purposes (please explain why) No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

Developments of this type will need to assess the habitats that are to be impacted by the development and to at least ensure there is no biodiversity net loss, and ideally a net gain. If safeguards are not in place then proposals could replace habitats of a higher biodiversity value with ones of a lower value. It may be unreasonable to require 10% BNG in all cases.

10. Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?

Yes (please explain why) No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

These houses should be treated in the same way as other houses. Some of them can be large projects that could have a significant impact on biodiversity.

11. Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

These sites can provide significant opportunities for biodiversity net gain.

12. Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

13. Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

AONBs, such as the Chilterns AONB, are areas of national landscape importance and are areas where the Government's response to the Glover Review (2022) proposes additional statutory purposes in relation to nature recovery and climate change. In these areas, the impact of development must be minimised and all opportunities to provide enhancements to the landscape and biodiversity should be maximised. In our view, there is no reason why these developments should be exempt from biodiversity net gain. In fact, there is a strong argument that the percentage gain should be increased in these areas, possibly to 20%.

14. Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?

Yes, exempt (please explain which development types and why they should be exempt)
 Yes, a modified requirement (please explain which development types and why they should face a modified requirement) No Other (please tell us more) Do not know

Please provide any explanation for your answer here

15. Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity net gain requirement?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

There is no reason why Biodiversity Net Gain should be exempted from these protected sites. There may be situations where the site as existing is considered to have its maximum potential biodiversity score. In such a case contributions should be sought to enhancing the habitats around the site to better link it into a wider ecological network.

16. Do you agree with the stated proposals for development (or component parts of a development on irreplaceable habitats), specifically:

a) the exclusion of such development from the quantitative mandatory biodiversity gain objective?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

There needs to be a bespoke approach to dealing with developments that may impact on irreplaceable habitats. These habitats cannot be traded for new types of habitats through Biodiversity Net Gain. Policies must give strong protection to these sites.

One approach would be a two stage process that assesses and mitigates the impacts on the irreplaceable habitat and then seeks a 10% increase in biodiversity within the habitat network adjacent to, but outside, the areas of irreplaceable habitats.

b) the inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

There must be strong safeguards for irreplaceable habitats that only allow development in truly exceptional circumstances. A biodiversity net gain plan should be submitted that assesses the site and its immediate vicinity and seek to protect the irreplaceable habitats and deliver a 10% gain in the surrounding areas.

c) where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

This is an appropriate response, but maybe we should be seeking a higher net gain, say 20%, in relation to these truly exceptional habitats.

d) to use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

It is essential to set out in policies and guidance those habitats that are considered to be irreplaceable.

e) the provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

This is essential.

17. Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

A biodiversity gain plan for the overall development should be approved as part of the outline application. It should not be made a condition of that application.

When each phase of the development comes forward, a more detailed biodiversity gain plan should be agreed, along with a programme for its implementation early in the development process.

18. Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?

Yes No (please suggest alternative approaches) Do not know

Please provide any explanation for your answer here

This would be a similar approach to our answer to Question 17.

19. Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

20. Do you think a slightly extended transition period for small sites beyond the general 2-year period would be appropriate and helpful?

Yes, a 12-month extension (please explain why) Yes, a 6-month extension (please explain why) No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

A shorter transition period is preferable due to the urgency of the biodiversity crisis, and the fact that BNG is not something that has suddenly been sprung on developers and LPAs, but has been flagged up for a while, so they should be adequately prepared.

21. Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?

Yes (please outline your suggestion and explain how it would help) No Do not know

Please provide any explanation for your answer here

22. Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?

- Yes, exemption (please define your proposed exemption) Yes, percentage reduction (please define your proposed reduction) Yes, other modified requirement (please define your proposed modified requirement) No Do not know

Please provide any explanation for your answer here

A minimum net gain of at least 10% should be sought for all projects. For significant infrastructure projects that may cause harm to AONBs, a 20% gain should be considered. Major developments such as roads and rail lines can cause significant harm to AONB landscapes in addition to biodiversity. The impact on the natural landscape should be factored in, and hence the suggested 20% net gain.

23. Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?

- Yes (please explain why) No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

It provides a structured approach that identifies potential gains early in the development process.

24. Do you consider that the November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?

- Yes (please, provide any supporting evidence or justification) No, it should be later (please provide any supporting evidence or justification) No, it should be sooner (please provide any supporting evidence or justification) Do not know

Please provide any explanation for your answer here

The answer to this should be 'No it should be sooner' as consideration of biodiversity gain should already be built into the project. To allow a period of up to Nov 25 before MBG is required seems ludicrous.

NSIPs by their very size and significance are likely to have bigger potential impacts and bigger potential opportunities, so it is more vital than ever that these are got right for biodiversity; and that government and big organisations progressing these NSIPs have even less reason to be unprepared for and unaware of BNG on the horizon.

25. Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements?

Yes (please explain why) No (please explain why not) Do not know

Please provide any explanation for your answer here

It should be sooner because BNG should already be built into the project.

26. Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?

Yes (please explain why) No (please explain why not) Do not know

Please provide any explanation for your answer here

27. Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

It is a key issue for biodiversity net gain that developers are not allowed to deliberately degrade habitats prior to their application in order to lower the net gain requirements.

28. Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?

Yes (please explain why) No (please explain why not) Do not know

Please provide any explanation for your answer here

The 10% gain should be across the whole site. Otherwise off-site compensations works could cause degradation of habitats that existed prior to the development. All areas should be included in the initial biodiversity net gain assessment.

29. Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?

Yes (please state what information) No Do not know

Please provide any explanation for your answer here

30. Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?

Yes Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated No, it should be longer No, it should be shorter Do not know

31. Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?

Yes, to enable compulsory acquisition (please explain what is needed) Yes, to manage impacts of compulsory acquisition (please explain what is needed) Yes, both (please explain what is needed) No Do not know

32. Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?

Yes (please explain what is needed) No Do not know

33. Do you agree with the proposed:

a) content of the biodiversity gain information and biodiversity gain plan?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

The key question here is the date at which the baseline is set. There is a risk that developers could deliberately degrade the site prior to the initial assessment to reduce the net gain requirements.

b) procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

34. We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?

Yes No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) Other (please tell us more)
 Do not know

Please provide any explanation for your answer here

35. Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?

Yes (please state what in particular would help most) No Do not know

Please provide any explanation for your answer here

It is crucial that detailed guidance is available to local planning authorities. This is particularly important in relation to biodiversity credits. If we are not careful, these could become a way of developers simply buying out of their biodiversity obligations.

There must be a clear hierarchy to the types and locations of compensatory habitats. On site must always be preferable and off site and out of area compensation must be in exceptional circumstances where all other options have been ruled out. In such cases, it should be questionable whether the development should be permitted at all.

36. How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

Don't know

37. Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

A system of biodiversity units is likely to have many loopholes and needs to be clarified by detailed guidance.

Biodiversity enhancement should in all cases be local to where the development is proposed to take place. This could be set on a District or County basis, or on an area such as an AONB.

Allowing a market across the whole of England could, for example, allow a landowner in the north of England to plant a large area of trees and receive several payments from developers in the Chilterns. Meanwhile the habitats in the Chilterns could be significantly degraded by the implementation of housing developments. There has to be a 'local first' policy built into BNG. If compensation is not possible locally the development should be refused.

38. Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

As a rule, biodiversity gains should be maximised on all sites, so should not be sold on. The requirement is for at least 10%, not exactly 10%.

However, if a local network of sites is identified through a local plan, then there could be scope to pool contributions on a local basis to get a more substantial gain.

39. Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

This should be organised locally, so it is about sites and not just a financial exercise.

40. Are the proposals outlined here sufficient to enable and encourage habitat banking?

Yes No (please specify what else could be done and why it is needed) Do not know

Please provide any explanation for your answer here

This needs to be planned strategically at a local level. The best place to do this would be through an emerging Local Plan or associated Supplementary Planning Documents.

41. Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?

Yes Yes, but not this specific date (please suggest an alternative date and explain your choice) No (please explain why not) Do not know

Please provide any explanation for your answer here

The date could be determined locally through the Local Plan.

42. Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

Yes (please specify what this time limit should be) No Do not know

43. Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?

Yes No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) Do not know

Please provide any explanation for your answer here

44. Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

Yes No (please explain why not) Do not know

Please provide any explanation for your answer here

45. Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?

Yes No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this) Other (please tell us more) Do not know

Please provide any explanation for your answer here

46. Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?

Yes No Other (please tell us more) Do not know

Please provide any explanation for your answer here

It is important that there is a clear description of what is to be created so that it can be matched to the development it is to compensate for. For example, if harm is to occur to a specific habitat or species, then the off-site enhancements should directly compensate for that.

47. Do you agree that the UK Government should allow the register operator to:
a) set a fee for registration in line with the principle of cost recovery?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

b) impose financial penalties for provision of false or misleading information?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

48. Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

49. Do you agree with our proposals for additionality with respect to:

a) measures delivered within development sites?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

b) protected species and off-site impacts to protected sites?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

c) on-site impacts on protected sites, and any associated mitigation and compensation?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

d) achievement of River Basin Management Plan Objectives?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

e) the strengthened NERC Act duty on public authorities?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

50. Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?

Yes, both A and B should be eligible No, only A (non-designated features or areas of statutory protected sites) should be eligible No, only B (local wildlife sites and local nature reserves) should be eligible No, neither should be eligible Other (please tell us more) Do not know

Please provide any explanation for your answer here

Designated sites should have their own national funding. If the work was likely to be done anyway then there would essentially be no net gain as a result of a development.

51. Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?

Yes Yes, in some circumstances (please specify which circumstances) Yes, but within a different range of the high water mark (please specify) No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

52. Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

53. Are these proposals for statutory biodiversity credits sufficient to:

a) ensure, when supported by suitable guidance, that they are only used by developers as a last resort?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

They must only be a last resort.

If developers do not have space on site for biodiversity enhancements then the built area of the site should be reduced to allow space for habitats before credits could be bought.

Our view is that BNG should operate on a local basis and if compensation cannot be created locally then the development should not be allowed to go ahead. There are way too many potential loopholes in operating a national register and the sale of credits.

b) mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?

Yes No (please explain why not) Other (please tell us more) Do not know

Please provide any explanation for your answer here

54. Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?

- Yes (please explain the alternatives and your reasoning)
 No (please explain why not)
 Other (please tell us more)
 Do not know

Please provide any explanation for your answer here

It should operate only on a local basis, guided by the Local Plan.

55. Do the principles for how we will set, and review credit price cover the relevant considerations?

- Yes
 No (if not, what further considerations should be included?)
 Other (please tell us more)
 Do not know

Please provide any explanation for your answer here

56. Do you agree with the proposed principles for credit investment?

- Yes
 No (please explain why not)
 Other (please tell us more)
 Do not know

Please provide any explanation for your answer here

There needs to be a direct link between a development and the specific sites that have received investment through credits. Otherwise the system could be open to abuse.

57. Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?

- Yes
 No, not sufficient
 No, overly burdensome or not achievable
 No (please explain why not and suggest how could they be improved)
 Do not know

Please provide any explanation for your answer here

58. Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?

- Yes (please explain why this would help)
 No (please explain why this would not help)
 Do not know

Please provide any explanation for your answer here

59. Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?

Yes Yes, but not sufficient Yes, but not achievable No (if not, how could they be improved?) Do not know

Please provide any explanation for your answer here

60. Considering the data requirements set out above and in greater detail in Annex C:

a) is there any additional data that you think should be included in the Biodiversity Reports?

Yes (please describe the data and explain the reasons for your view) No Do not know

Please provide any explanation for your answer here

b) is there any data included here that should not be required as part of the Biodiversity Reports?

Yes (please describe the data and explain the reasons for your view) No Do not know

Please provide any explanation for your answer here